

12-1011
Poventud v. City of N.Y., et al.

**UNITED STATES COURT OF APPEALS
 FOR THE SECOND CIRCUIT**

ORDER

At a stated term of the United States Court of Appeals for the Second Circuit, held at the Thurgood Marshall United States Courthouse, 40 Foley Square, in the City of New York, on the 6th day of June, two thousand thirteen.

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MARCOS POVENTUD,
Plaintiff-Appellant,

-v.-

12-1011

CITY OF NEW YORK, ROBERT T. JOHNSON,
BRONX COUNTY, FRANKIE ROSADO,
INDIVIDUALLY, MEMBERS OF THE NEW YORK
CITY POLICE DEPARTMENT, DANIEL TOOHEY,
INDIVIDUALLY, MEMBER OF THE NEW YORK
CITY POLICE DEPARTMENT,
Defendants-Appellees.

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Following disposition of this appeal on April 19, 2013, an active judge of the Court requested a poll on whether to rehear the case in banc. A poll having been conducted and a majority of the active judges of the Court having voted in favor of rehearing this appeal in banc, IT IS HEREBY ORDERED that this appeal be heard in banc. See Fed. R. App. P. 35(a). The in banc panel will consist of the active judges of the Court and (subject to each's election) the senior circuit judges who served on the three-judge panel. See 28 U.S.C. § 46(c).

The parties are instructed to brief all issues relevant to the appeal, including: whether Heck v. Humphrey, 512 U.S. 477 (1994), categorically bars any action under § 1983 that necessarily implies the invalidity of an outstanding conviction; whether there are exceptions to the Supreme

1 Court's holding in Heck; whether such exceptions are
2 compatible with principles of federalism, consistency, and
3 finality; if exceptions exist, in what circumstances they
4 apply; how (if at all) Appellant's guilty plea impacts his §
5 1983 claim; and what other defenses (if any) are available
6 to Appellees. Briefing is not restricted to the issues and
7 arguments presented to the original panel. We invite amicus
8 curiae briefs from interested parties.

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10 The Appellant's brief and appendix, and any amicus
11 curiae briefs in support thereof, shall be filed by July 6,
12 2013. The Appellees' brief and appendix, and any amicus
13 curiae briefs in support thereof, shall be filed by August
14 5, 2013. The Appellant's reply brief shall be filed by
15 August 15, 2013.

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17 Oral argument will be held on September 25, 2013, at
18 4:00 p.m. at the Thurgood Marshall United States Courthouse,
19 40 Foley Square, New York, New York.

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22 FOR THE COURT:
23 CATHERINE O'HAGAN WOLFE, CLERK
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